IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

RSA.No. 405 of 2006()

AS.104/2001 of SUB COURT, KASARAGOD
OS.168/2000 of ADDL.MUNSIFF, KASARAGOD

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: APPELLANT/ APPELLANT/PLAINTIFF:

THE PLANTATION CORPORATION OF
KERALA LIMITED, KOTTAYAM.

BY ADV. SRI.JOSEPH MARKOSE
SRI.MATHEWS K.UTHUPPACHAN

RESPONDENT: RESPONDENT/DEFENDANT:

ABDULRAHIMAN, S/O. ABOOBACKER,
RESIDING AT YENAPPAMOOLE,
P.O. BOVIKANAM, BAIKARA IN MULIYAR VILLAGE,
KASARAGOD TALUK, KASARAGOD DISTRICT.

BY ADV. SRI.SURESH KUMAR KODOTH

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 405 OF 2006

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Dated this the 28th day of September, 2007

JUDGMENT

The plaintiff in O.S.168/2000 on the file of Munsiff Court, Kasaragod is the appellant. Defendant is the respondent. Appellant instituted the suit seeking a decree for permanent prohibitory injunction contending that plaint A schedule property along with the other properties were in the possession of Kerala State Agricultural Department and as per the order G.C.R.T.2340/77/A.D. Dated 2.8.1977 the State of Kerala approved rehabilitation of the State owned cashew plantation with the aid from world Bank and cashew plantation owned by Agricultural Department at Perla, Adhur, Muliyar and Periya groups in Kasaragod and Hosdrug Taluks were transferred to Plantation Corporation of Kerala and including the plaint A schedule property was ordered to be assigned and transferred to the appellant as per

G.O.MS.117/78/RD dated 19.1.1978 and pending survey land was taken possession on 5.12.1978 and confirmed in G.O.(MS)1491/78/RD and since then appellant has been in possession of the property. On 20.4.2000 respondent unlawfully entered into plaint A schedule property with his henchmen and started digging trench and he has no right to do so and he is to be restrained by a permanent prohibitory injunction.

2.Respondent in the written statement contended that plaint schedule property does not belong to the appellant Corporation and it was not in the possession of Agricultural Department and the property was originally a Government land in the possession of Revenue Department and respondent filed an application for assignment of the land and as per assignment order dated 31.7.1995 in L.A.No.204/1994/Muliyar it was assigned to respondent and a patta was also granted and since then respondent has been in possession of the property to the knowledge of all and appellant is

not entitled to the decree sought for.

2. Learned Munsiff on the evidence of Exts.A1 to A1 to A3, B1 to B5 found that appellant did not establish that they obtained possession of the plaint schedule property pursuant to Ext.A1 and evidence establish that the property was assigned to respondent under Ext.B1 and he has been in possession of the property and dismissed the suit. Appellant challenged the decree and judgment before Sub Court, Kasaragod in A.S.104/2001. Learned Sub Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the suit. It is challenged in the second appeal.

4. Learned counsel appearing for appellant was heard.

5. The argument of learned counsel is that under Ext.A1 and A2, the property which originally vested with Agricultural Department was transferred to Plantation Corporation and possession of the property was taken as evidenced by Ext.A3 list of lands prepared by the Revenue Department and the

claim of the respondent is subsequent to Ext.A3 in 1995 and when the property has already been transferred by the Agricultural Department to appellant Corporation, that property cannot be assigned to the respondent and even if there is an assignment, respondent has no right over the property and courts below should have granted the decree sought for.

6. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal.

7. Being a suit for permanent prohibitory injunction simpliciter the only question to be decided is regarding possession of the plaint schedule property. Even if under Ext.A1 and A2 appellant Corporation had title to the property, that will not enable the Corporation to get a decree, without establishing possession. What is argued by learned counsel is that under Ext.A3 plaint schedule property was taken possession as it is one of the tiems shown in the list of lands

taken possession and therefore courts below should have granted the decree. Courts below on the evidence including Ext.C1 report found that as against the case of appellant Corporation that the plaint schedule property is surrounded by the lands of the Plantation Corporation, it is not so and vacant lands and cashew plantation are only on the southern and eastern side of the plaint schedule property. Courts below also found that the land was assigned to the respondent and challenging the assignment, proceedings were pending before Revenue Divisional Officer, Kasaragod and evidenced by Ext.B5 order it was found that respondent has been in possession of the property assigned to him under Ext.B1. It is in such circumstance, courts below found that appellant did not establish that they obtained possession of the property and are not entitled to the decree for injunction. That factual finding cannot be interfered in the light of the evidence on record.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006